



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,486	12/29/2003	Euljoon Park	A03P1088	8738

36802 7590 07/25/2006

PACESETTER, INC.
15900 VALLEY VIEW COURT
SYLMAR, CA 91392-9221

EXAMINER

FAULCON JR, LENWOOD

ART UNIT	PAPER NUMBER
----------	--------------

3762

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/748,486

Applicant(s)

PARK ET AL.

Examiner

Lenwood Faulcon, Jr.

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

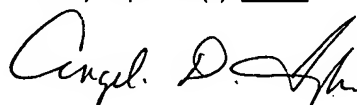
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 15-35.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.



ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: For Applicant's convenience Examiner specifically points out the rejections of claims 15-35; however, the limitations have always been present in the art of record. In regards to claim 15, Alt discloses an implantable cardiac device that promotes intrinsic rhythm by increasing the pacing rate to compensate for orthostasis phenomenon when a patient transitions from a comparatively less upright posture to a comparatively more upright posture (col. 7 lines 10-15), which thus Examiner maintains the position that the Alt reference teaches of a implantable cardiac device that comprises circuitry to sense whether a patient is in intrinsic rhythm when transitioning from a less upright posture to a more upright posture. Further in regards to claim 15, although Alt does not specifically teach of a processor for detecting whether or not the patient is in intrinsic rhythm, Examiner takes the position that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system as taught by Alt to include such limitations as taught by Pitts Crick et al. Pitts Crick et al. teaches of a implantable cardiac device that comprises a processor that has the ability to enable or disable increased pacing as deemed necessary (see for example col. 4 lines 13-16). Examiner maintains the position that it is well known in the art for pacing systems to comprise processors that adjust (enabling and/or disabling) pacing rates as deemed necessary to meet a patient's needs, as taught by Pitts Crick et al., and thus it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system as taught by Alt to include a processor which is enables and disables increased pacing as deemed necessary when the patient transitions from a less upright posture to a more upright posture, since this would provide more efficient therapy and energy conservation. Examiner also notes that although Alt does not specifically state that the increased pacing rate is to achieve a more natural vasoconstrictive response, it does appear that such an outcome is inherent in the system, since the pacing of the Alt system appears to be similar to that of the claimed invention. Further, Applicant has not incorporated such limitations in claim 15. Similarly, independent claims 20, 25, 27 and 32, present similar limitations as to claim 15, and stand rejected for similar reasons. Further, dependent claims 16-19, 21-24, 26, 28-31 and 33-35, stand rejected for the reasons as set forth in the previous Office Action of April 6, 2006.